

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 30, 2018

Sheila T. Reiff
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2017AP486

Cir. Ct. No. 1994CV242

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**JOHN SHIELY AND HELEN SHIELY, AS SUCCESSORS IN INTEREST TO
MICHAEL DORAN AND THEODORE WALDON,**

PLAINTIFFS-APPELLANTS,

V.

CITY OF PRESCOTT,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Pierce County:
JAMES J. DUVALL, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. John and Helen Shiely (the Shielys), as successors in interest to Michael Doran and Theodore Waldon (collectively the Dorans), appeal an order denying them relief from a judgment entered in 1995. The issues on appeal involve whether the Shielys had standing to bring the motion for relief and whether the circuit court properly exercised its discretion in denying the motion. We affirm.

BACKGROUND

¶2 This matter stems from a 1994 lawsuit whereby the Dorans sought ownership, by adverse possession, of certain public shoreline property commonly referred to as the “Waterfront Turnaround,” located between the waters’ edge of the St. Croix River and the Doran residence on Lake Street in the City of Prescott. The Dorans claimed they had “owned and maintained” the Waterfront Turnaround property since 1923. In the alternative, the Dorans’ lawsuit requested a declaration that they had a prescriptive easement to continue to maintain a dock on the St. Croix River that they allegedly “continuously occupied, maintained, landscaped, and improved” since the 1930s.

¶3 In 1995, the Dorans and the City executed a Stipulation For Dismissal and Release Of All Claims. This stipulated settlement agreement granted a perpetual easement over the described property to the Dorans and their heirs, successors and assigns. In exchange, the Dorans released all claims against the City, including any claims for ownership by adverse possession. The easement was recorded, and the circuit court entered judgment dismissing the Dorans’ claims with prejudice.

¶4 The Dorans eventually sold the property on Lake Street, and the Shielys later acquired it. In 2015, the Shielys filed a claim against the City

alleging a private nuisance on the property that interfered with the Shielys' "quiet use and enjoyment of their land." The Shielys sought monetary and injunctive relief. The City answered and counterclaimed, alleging that, to the extent the easement granted a right to place a dock on the beach, it violated WIS. STAT. § 30.133 (2015-16),¹ which prohibits an owner of riparian land that abuts navigable water from conveying an easement for private docking rights.

¶5 In response to the City's position in the nuisance action, the Shielys moved to vacate the 1995 judgment and reopen the Dorans' adverse possession claim.² Specifically, they contended the stipulation was void because the Dorans received no consideration for giving up their adverse possession and prescriptive easement claims. According to the Shielys, the Dorans "believed they were being granted an easement for docking purposes, but because the City lacked authority [pursuant to WIS. STAT. § 30.133] to grant this property interest, the settlement agreement, along with the judgment in this case, is void." In addition, if the easement was for ingress and egress only, they argued the easement accomplished no greater benefit to the Dorans than that which members of the general public enjoyed. Thus, the easement was illusory, as it failed to give up anything of value. The Shielys also argued the judgment violated due process and was thus void

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

² At the hearing on the Shielys' motion, the City clarified its position that the easement would violate WIS. STAT. § 30.133 "to the extent [the easement] granted a right to place a dock on the beach." The circuit court asked the City to confirm that its position was consistent in the two litigations, and stated: "I clearly hear you saying today the easement did not create the right to establish or maintain a dock. First of all, as far as today is concerned is that the City's position?" The City responded, "I think it is, yes."

under WIS. STAT. § 806.07(1)(d). Finally, they also sought relief from the judgment under § 806.07(1)(h).

¶6 The circuit court denied the Shielys’ request to vacate the judgment and reopen the adverse possession case. The court concluded the Shielys lacked standing to bring the motion to reopen the adverse possession case, as “Mr. Doran is not a party to the case.” Nevertheless, the court stated that the standing issue was “a fair subject of academic debate.” Still, the court found that it would have granted a motion by the Shielys to intervene or otherwise participate in a proceeding brought to vacate the prior judgment, because the Shielys had a “real interest in the matter as the successors to the original Plaintiff’s interests.” Accordingly, the court indicated “I’m going to go ahead and talk about the merits of the issue[s] in the same manner as if there had been a motion to intervene.”

¶7 With regard to the Dorans’ 1994 complaint, the circuit court stated:

What did the complaint ask for? It asked for adverse possession of land. No where [sic] in there does it ask for the right to establish any dock. The only mention of the word – I don’t remember if the complaint mentioned the word dock at all. It was adverse possession of land.

It identified the land that they were seeking the adverse possession of. The land identified was the land between the water’s edge ... and Lake Street. Just looking at the real estate identified, that excludes any issues relating to things in the water. This was an adverse possession claim for a piece of land.

¶8 The circuit court found the language of the easement “clear and unambiguous.” The court concluded the easement was for ingress and egress only, and it did not grant the right to place or maintain a dock. The court further stated, “The easement which is recorded describes land [west] of the water’s edge, and the only mention of a dock is in describing the purpose of the easement.” The

court noted “nothing in the easement expressly grants the right for a dock to remain. It just simply says you can have access to a dock.”

¶9 Moreover, the circuit court found the easement was supported by consideration “in that it granted rights superior to that enjoyed by the general public. The City as a riparian owner I assume could have shut off the public or regulated the public” However, the easement prevented the City from “shutting off” the Shielys or “unreasonably obstruct[ing] their easement.”

¶10 The circuit court also noted that WIS. STAT. § 30.133 existed at the time these documents were executed, and the parties were represented by counsel who knew, or should have known, of the statute’s existence. The court also stated, “I assume [the Shielys] had their title examined when they bought the property ... these issues could have been easily discovered in a title examination at the time they bought the property.” The court therefore denied the motion for relief from judgment. The Shielys now appeal.

DISCUSSION

¶11 The Shielys first argue the circuit court erred by finding they lacked standing to bring their motion for relief from judgment. We need not reach the issue of whether the Shielys had standing to file the motion for relief from judgment. Even if we assume without deciding the Shielys had standing to bring the motion for relief as successors in interest, we conclude the circuit court properly exercised its discretion by denying the motion on the merits.

¶12 The Shielys argue the circuit court erred three ways. First, the Shielys contend the circuit court erred by limiting the easement to rights of ingress and egress. In particular, the Shielys contend “the parties to the Settlement

Agreement intended the easement to be for the purpose of placing and maintaining a dock.” In finding that the easement was for ingress and egress only, the Shielys assert the court “negated the purpose of the easement.” Second, they argue that interpreting the settlement agreement as the circuit court did renders it void for lack of consideration. On this basis, the Shielys assert the judgment in the adverse possession action is also void, such that the adverse possession claim should be reopened under WIS. STAT. § 806.07(1)(d). Third, the Shielys argue entitlement to relief from judgment under the “catch-all” provision of § 806.07(1)(h). We reject each of these arguments.

¶13 We review the language of an easement to determine the parties’ intent, and if the language is unambiguous we apply that language and do not consider extrinsic evidence of the parties’ intent. *See Berg v. Ziel*, 2015 WI App 72, ¶14, 365 Wis. 2d 131, 870 N.W.2d 666. The easement here provided as follows:

EASEMENT

The undersigned City of Prescott hereby grants to [the Dorans], an easement for use over the following described property in Prescott, Pierce County, Wisconsin:

“All that land lying West of the property described in Exhibit A, which is attached hereto, and between the water’s edge of Lake St. Croix and Lake Street in the City of Prescott.”

The easement granted herein is for the purpose of ingress and egress over the above-described property for the purpose of granting access to a dock on the St. Croix River owned by [the Dorans]. Said dock is adjacent to the above-described property.

This easement is perpetual in nature and binds the City of Prescott and its successors in interest. Further, this easement will benefit Michael Doran and Theodore Waldon and their heirs, successors and assigns.

¶14 We agree with the circuit court that the language of the easement was clear and unambiguous. The easement described its scope as the land “between the water’s edge ... and Lake Street” In the portion stating the purpose for this defined easement, the document used the terms “ingress and egress” over the described property in order to access a dock “adjacent to” the described property. Still, the easement language limits the easement to ingress and egress, and then only to “the water’s edge of Lake St. Croix”; it did not grant the right to place or maintain a structure, including a dock over the water.

¶15 The Shielys insist that if we conclude the easement was for ingress and egress only, the settlement agreement was void for lack of consideration. The Shielys contend the beach is already open to the public, and therefore, the only right the Dorans received was a right they already had—the right to travel across the Waterfront Turnaround.

¶16 However, as the circuit court properly observed, the easement gives the Shielys the right to cross the Waterfront Turnaround even during hours it is closed to the public. Furthermore, the City could deny public access or sell the property. As the court stated, “The City as riparian owner ... could have shut off the public or regulated the public or built obstructions to prevent the easy access of the Shielys to their dock structure, put a building there” As the court further noted, the easement provided a perpetual right of ingress and egress over the property, and it bound the City’s successors in interest. As such, the settlement agreement was supported by consideration.

¶17 The Shielys also claim the Dorans’ adverse possession case must be reopened under WIS. STAT. § 806.07(1)(d), because the judgment was void as a violation of due process. Whether the judgment is void is a question of law which

we review de novo. “When material facts are undisputed, the question presented on appeal is one of law An appellate court decides questions of law independently without deference to the lower court’s decision.” *See State v. Big John*, 146 Wis. 2d 741, 748, 432 N.W.2d 576 (1988). The Shielys argue:

The City stripped Doran, and their successors in interest, of a substantial legal and property right. In exchange for an easement to travel across the Waterfront Turnaround, Doran relinquished their right to bring their claims against the City, and gave up potential ownership of the Waterfront Turnaround. Therefore, the Settlement Agreement and subsequent judgment was in violation of Doran’s due process rights.

¶18 It is axiomatic that a judgment entered contrary to due process is void. *See, e.g., Neylan v. Vorwald*, 124 Wis. 2d 85, 95, 368 N.W.2d 648 (1985). When analyzing a substantive due process claim, we consider whether government conduct was either a deliberate decision to deprive liberty interests, or reflected the State’s deliberate indifference to those liberty interests. *See State v. Schulpius*, 2006 WI 1, ¶33, 287 Wis. 2d 44, 707 N.W.2d 495.

¶19 The Shielys’ due process argument is not well developed. In any event, beginning on April 4, 1994, WIS. STAT. § 30.133 provided that “no owner of riparian land that abuts a navigable water may grant by an easement ... any riparian right in the land to another person, except for the right to cross the land in order to have access to the navigable water.” The statute further provided “[t]his right to cross the land may not include the right to place any structure or material, including a boat docking facility” *Id.* The Dorans commenced their adverse possession lawsuit on October 13, 1994, after the effective date of § 30.133. The easement in this case was recorded on April 28, 1995. Accordingly, the Dorans knew, or should have known, of the effect of § 30.133 at the time of the settlement

agreement that resulted in the release of all claims and a judgment of dismissal with prejudice. In addition, the Shielys were on notice of the recorded easement, as well as § 30.133, when they purchased the Lake Street residence.

¶20 Contrary to the Shielys’ perception, the City therefore did not “strip” the Dorans of any right. The parties stipulated to a settlement agreement that resulted in an easement and a judgment dismissing the adverse possession case. To the extent the Shielys attempt to argue the Dorans unfairly “gave up” their adverse possession of the property, that argument fails for the simple reason there is no certainty the adverse possession claim would have succeeded. In all, the record does not provide a basis to find a violation of the Dorans’ due process rights. Accordingly, the Shielys are not entitled to reopen the adverse possession claim based upon a void judgment under WIS. STAT. § 806.07(1)(d).

¶21 Finally, the Shielys claim entitlement to relief from the judgment under WIS. STAT. § 806.07(1)(h). Subsection (1)(h) is a catch-all provision that allows a court to vacate a judgment for “[a]ny other reasons justifying relief from the operation of the judgment.” The subsection must be used sparingly, and only when the “sanctity of the final judgment is outweighed by the incessant command of the court’s conscience that justice must be done in light of all the facts.” *See Village of Trempealeau v. Mikrut*, 2004 WI 79, ¶36, 273 Wis. 2d 76, 681 N.W.2d 1990. This statute gives circuit courts broad discretionary authority, which we reverse only for an erroneous exercise of discretion, and invokes the pure equity power of the court. *Allstate Ins. Co. v. Brunswick Corp.*, 2007 WI App 221, ¶¶6, 18, 305 Wis. 2d 400, 740 N.W.2d 888. However, judicious exercise of the court’s authority by limiting § 806.07(1)(h) relief to only the most egregious circumstances promotes the balance between finality of judgments and fair judgments. *Id.*, ¶17.

¶22 Factors bearing on the equities of the present case weigh heavily against vacating the judgment. First, the judgment was entered pursuant to a stipulation of the parties. The stipulated settlement agreement that the Dorans signed reveals it was the product of the Dorans’ conscientious, deliberate, and well-informed choice. The record also reveals that the Dorans were ably represented by counsel. In fact, the Dorans’ counsel drafted the settlement agreement. The language of the settlement agreement formed the basis for the language of the easement. The settlement agreement provided, in part:

The City of Prescott hereby grants a perpetual easement to [the Dorans] over and across the following described real estate in Pierce County, Wisconsin:

“All that land lying West of the property described in Exhibit A, which is attached hereto, and between the water’s edge of Lake St. Croix and Lake Street in the City of Prescott.”

The easement granted to [the Dorans] shall be for the purpose of ingress and egress over the easement property to a dock located on the St. Croix River which is owned by [the Dorans].

¶23 In addition, and as the circuit court properly observed, when the Shielys purchased the Lake Street residence, WIS. STAT. § 30.133 had long been in effect. The easement was also recorded prior to the Shielys’ purchase of the property. As the court stated:

[T]hese issues could have been easily discovered in a title examination at the time [the Shielys] bought the property. I don’t know whether it was or not. If not, then maybe it’s an issue for another day with other parties. If it was, did they buy it then with knowledge of this potential issue?

¶24 We conclude the circuit court did not erroneously exercise its discretion in concluding the circumstances here are not unique or extraordinary, so as to warrant relief from the judgment under WIS. STAT. § 806.07(1)(h).³

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

³ Because we conclude relief from judgment was not appropriate, we need not reach the issue of whether the motion was made within a reasonable time under WIS. STAT. § 806.07(2).

